IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1210 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DAISHIKBHAI HARIBHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/07/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Criminal Procedure Code, the petitioner has prayed for an appropriate writ, direction and / or order quashing and setting

aside the impugned order dated 7.12.2006 passed by the learned JMFC, Valiya below application under section 451 of the Criminal Procedure Code rejecting the application for releasing the tanker bearing registration No. GJ.6.T.3895. It is also further prayed to quash and set aside the order dated 19.1.2007 passed by the learned Additional Sessions Judge, Fast Track Court No. 3, Camp Ankleshvar, Bharuch passed in Criminal Revision Application No. 5 of 2007 confirming the order dated 7.12.2006 passed by the learned JMFC, Valiya.

2. It is the case on behalf of the petitioner that the petitioner is a registered owner of the tanker bearing registration No. GJ.6.T.3895. That the complaint / FIR being CR No. II 105/2006 came to be registered with Valiya Police Station for the offence under sections 3 and 6 of the Essential Commodities Act (hereinafter referred to as “the Act” for short). That the tanker in question came to be seized by the Investigating Officer therefore,

the petitioner submitted an application under section 451 of the Criminal Procedure Code before the learned JMFC, Valiya for releasing the mudamal tanker. The learned JMFC, Valiya by its order dated 7.12.2006 dismissed the said application on the ground that in view of section 6 (E) of the Act, he has no jurisdiction to release the tanker and the Collector only has jurisdiction to do so. Being aggrieved and dissatisfied with the order passed by the learned JMFC, Valiya dated 7.12.2006 passed below application under section 451 of the Criminal Procedure Code, the petitioner preferred Criminal Revision Application No. 5 of 2007 before the District & Sessions Court, Bharuch and by judgment and order dated 19.1.2007 the learned Additional Sessions Judge dismissed the said Criminal Revision Application application confirming the order passed by the learned JMFC, Valiya dated 7.12.2006 by holding that only the Collector has jurisdiction under section 6(E) of the Act to release the tanker. Being aggrieved and dissatisfied with both the

orders, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Criminal Procedure Code.

3. Shri H.R.Prajapati, learned advocate appearing on behalf of the petitioner has submitted that both the Courts below have materially erred in rejecting the application of the petitioner for releasing the mudamal – tanker under section 451 of the Criminal Procedure Code on the ground that it is only the Collector, who has jurisdiction to release the tanker as provided under section 6(E) of the Act. It is submitted by Shri Prajapati that no proceedings are pending before the Collector, Bharuch and section 6(E) of the Act would be applicable only where any proceedings are pending before the Collector. Shri Prajapati has relied upon the judgment of the Hon'ble Supreme Court in case of ***State of Madhya Pradesh & Others V/s. Rameshwar Rathod*** reported in ***(1990) 4 SCC 21*** in support of his submission that the powers of the Magistrate

under the Criminal Procedure Code to release the mudamal are not taken away and that the criminal Court's jurisdiction to entertain an application is not completely ousted. Under the circumstances, it is requested to allow the present application.

4. Shri M.R.Mengde, learned APP has submitted that he has inquired from the office of the Collector, Bharuch as to whether any proceedings are pending before him or not and as per the instructions, no proceedings are pending before the Collector under the provisions of the Act for the incident in question.

5. Heard the learned advocates appearing for the respective parties.

6. A criminal complaint / FIR filed at the Valiya Police Station against the petitioner for the offence under sections 3 and 6 of the Act and during the course of the investigation, the mudamal – tanker has been seized. The said

complaint has been filed by the PSI, Valiya. As per section 6(A) of the Act, *where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report to that effect shall, without any unreasonable delay be sent to the Collector within whose jurisdiction the seizure is made, and the Collector may, if thinks it expedient so to do, inspect or cause to be inspected such essential commodity, and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been contravention of the order, may order for confiscation of – (a) the essential commodity so seized; (b) any package, covering or receptacle in which such essential commodity is found; and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. Section 6 (B) provides for issuance of show cause notice before confiscation of foodgrains, etc. Section 6(E) provides for Bar of jurisdiction in certain cases. As per Section 6(E) – whenever any essential commodity is*

seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6(A), the Collector, or, as the case may be, shall have, and, notwithstanding anything to the contrary contained in any other law for the time being force, (any other court, tribunal or authority) shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity; package, covering, receptacle, animal, vehicle, vessel or other conveyance. Thus, considering section 6(E), it would be applicable when the essential commodity is seized pending confiscation under section 6(A) of the Act and in that case only the Collector has jurisdiction. In the present case, though section 6(A) mandates report to be made to the Collector, no such report has been made by the

PSI, Valiya Police Station and accordingly, no confiscation proceedings under section 6(A) of the Act are pending before the Collector, Bharuch. Under the circumstances, when no confiscation proceedings are pending before the Collector, at present, section 6(E) of the Act will not come into play and the bar as provided under section 6(E) of the Act would not be attracted. Under the circumstances, when at present, only the proceedings are pending by way of complaint being CR NO. II 105/2006, the provisions of section 451 of the Criminal Procedure Code is attracted for release of the mudamal – tanker and therefore, in absence of any confiscation proceedings pending before the Collector, under section 6(A) of the Act, the Magistrate would have jurisdiction to pass an appropriate order with regard to release of mudamal – tanker under section 451 of the Criminal Procedure Code. Under the circumstances, the orders passed by both the Courts below requires to be quash and set aside and the matter is to be remanded to the learned

JMFC, Valiya for passing an appropriate order on the application for release of tanker in exercise of powers under section 451 of the Criminal Procedure Code and the same is to be decided on its own merits and in accordance with law. However, in the meantime, if any report is made to the Collector under section 6(A) of the Act, in that case, he would have jurisdiction and the application for release of the tanker would have to be submitted before the concerned Collector, Bharuch.

7. For the reasons stated above, the petition succeeds in part. The impugned orders passed by the learned JMFC, Valiya as well as the learned Additional Sessions Judge, Fast Track Court No.3, Camp at Ankleshwar, Bharuch are hereby quashed and set aside and the matter is remanded to the learned JMFC, Valiya for deciding the application under section 451 of the Criminal Procedure Code for releasing the tanker afresh in accordance with law and on its own merits. Simultaneously, considering the provisions of

section 6(A) of the Act, the concerned Police Officer is also required to send the report to the Collector for exercising the powers under section 6(A) of the Act and therefore, the PSI, Valiya Police Station is directed to submit the report to the Collector, Bharuch as provided under section 6(E) of the Act immediately. If before the application of the petitioner under section 451 of the Criminal Procedure Code is decided and disposed of, the report is made by the concerned PSI to the Collector, Bharuch, as provided under section 6(A) of the Act and the Collector, Bharuch exercised the powers for confiscation under section 6(A) of the Act, in that case, the petitioner to move an appropriate application for release of the tanker before the Collector, Bharuch and in that case, considering section 6(E) of the Act, the learned JMFC would not have any jurisdiction. Rule is made absolute to the aforesaid extent.

[M.R.Shah, J.]

kdc